

SECOND REGULAR SESSION

HOUSE BILL NO. 1465

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SMITH.

Read 1st time January 15, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

3732L.011

AN ACT

To amend chapter 407, RSMo, by adding thereto four new sections relating to the deceptive sale or promotion of health-related cash discount cards, with a penalty provision.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 407, RSMo, is amended by adding thereto four new sections, to be
2 known as sections 407.1350, 407.1353, 407.1356 and 407.1360, to read as follows:

**407.1350. It shall be unlawful for any person to sell, market, promote, advertise,
2 or otherwise distribute any card or other purchasing mechanism or device, which is not
3 insurance, that purports to offer discounts or access to discounts from health care
4 providers in health-related purchases where:**

5 **(1) Such card or other purchasing mechanism or device does not expressly provide
6 in bold and prominent type that the discounts are not insurance;**

7 **(2) Such discounts are not specifically authorized by an individual and separate
8 contract with each health care provider listed in conjunction with the card or other
9 purchasing mechanism or device; or**

10 **(3) The discounts or access to discounts offered, or the range of discounts or access
11 to the range of discounts offered are misleading, deceptive, or fraudulent, regardless of the
12 literal wording used.**

**407.1353. 1. Any person, firm, private corporation, trade association, or municipal
2 or other public corporation may maintain an action to enjoin a continuance of any act or
3 acts in violation of sections 407.1350 to 407.1360 and for the recovery of damages.**

4 **2. Any person subject to liability pursuant to this section shall be deemed, as a
5 matter of law, to have purposefully availed himself or herself of the privileges of
6 conducting activities within the state of Missouri sufficient to subject such person to the**

7 personal jurisdiction of the circuit court hearing an action brought pursuant to sections
8 407.1350 to 407.1360.

9 3. An action for a violation of this section may be brought in the county where the
10 plaintiff resides, where the plaintiff conducts business, or where the card or other
11 purchasing mechanism or device was sold, marketed, promoted, advertised, or otherwise
12 distributed.

13 4. (1) In such action, if the court finds that the defendant is violating or has
14 violated any of the provisions of sections 407.1350 to 407.1360, the court shall enjoin the
15 defendant from a continuance thereof.

16 (2) Except to recover for actual damages pursuant to paragraph (b) of subdivision
17 (3) of this subsection, the plaintiff shall not be required to allege or prove actual damages.

18 (3) In addition to injunctive relief, the plaintiff shall be entitled to recover from the
19 defendant:

20 (a) One hundred dollars per card or other purchasing mechanism or device sold,
21 marketed, promoted, advertised, or otherwise distributed within the state of Missouri, or
22 ten thousand dollars, whichever is greater;

23 (b) Three times the amount of the actual damages, if any, sustained;

24 (c) Reasonable attorney's fees;

25 (d) Costs; and

26 (e) Any other relief which the court deems proper.

27 5. All actions pursuant to this section shall be commenced within two years after
28 the date on which the violation occurred or within two years after the person bringing the
29 action discovered, or in the exercise of reasonable diligence, should have discovered the
30 occurrence of the violation. The period of limitation provided in this section may be
31 extended for a period of one hundred eighty days if the person bringing the action proves
32 by a preponderance of the evidence that the failure to timely commence the action was
33 caused by the defendants engaging in conduct solely calculated to induce the plaintiff to
34 refrain from or postpone the commencement of the action.

35 6. The remedies prescribed in this section are cumulative and in addition to any
36 other remedy provided by law.

407.1356. Any person who sells, markets, promotes, advertises, or otherwise
2 distributes any card or other purchasing mechanism or device, which is not insurance, that
3 purports to offer discounts from health care providers in health-related purchases in
4 Missouri shall designate an agent who is a resident of Missouri for service of process and
5 register such agent with the secretary of state.

407.1360. Nothing in sections 407.1350 to 407.1360 shall be construed to apply to

- 2 eye or vision care services, glasses, or contact lenses provided by an optometrist or
- 3 ophthalmologist.